

March 09, 2017

Dear Representative:

The Union of Concerned Scientists, with 500,000 members and supporters throughout the country, **strongly opposes H.R. 1430**, the misleadingly named Honest and Open New EPA Science Treatment Act (HONEST Act) of 2017. The proposal shows that supporters of this legislation have a fundamental misunderstanding of the process by which science operates and is ultimately a solution in search of a problem.

This legislation would require that all raw data, models, code, and other materials from scientific studies be made available to the public before a federal agency could use it. But, the Environmental Protection Agency (EPA) already is exhaustingly transparent and the science it relies on to make decisions is made available to the public.

The true intention of this bill is not to increase transparency in agency use of science in policymaking, but rather to handcuff the EPA from ever using critical information necessary to follow through on statutorily required rulemaking for popular legislation like the Clean Air Act and the Clean Water Act. The additional restrictions imposed by this proposed bill would make it almost impossible to base public protections on the best available scientific information. In particular, if enacted, the language appears to indicate that the EPA would be inhibited by the following challenges:

- **The EPA wouldn't be able to use most health studies.** It should be expected that any agency tasked with protecting public health should be able to use public health data. The confidentiality of such data is usually protected by institutional review boards (IRB) to insure the privacy of the participants; thus, the data could not be made publicly available as demanded. Since many EPA rules are health-based standards, this rule would severely restrict the ability of the agency to base rules on science.
- **The EPA wouldn't be able to draw from industry data sources.** The agency would be prevented from using data provided by industry to the agency. Since information from industry sources is often not publicly available, to protect proprietary data from their competitors, a law requiring as such would prevent the agency from utilizing industry data, a source of information that often provides otherwise unknown data to inform EPA rule-making.

- **The EPA wouldn't be able to use new and innovative science.** New scientific methods and data may be restricted by intellectual property protections or industry trade secret exemptions. This bill doesn't include protections for intellectual property, and it makes industry trade secrets available upon request to anyone who signs an agreement. If researchers and industry knew that sharing their science with the EPA meant that their intellectual property would be exposed to the world, they might opt out. This would limit EPA's ability to rely on the best available science including novel approaches that may not yet be publicly available.
- **Long-term and meta- analyses would be unavailable.** Many of the public health and safety issues facing the nation cannot be measured within a small timeframe. The EPA needs long-term exposure studies that assess the link between chronic diseases/mortality and pollutants; or on meta- analyses that include many different studies and locations to provide a more robust look at the science. In H.R. 1430, the provision that studies be conducted "in a manner that is sufficient for independent analysis and substantial reproduction of research" may prevent use of these vital studies by the EPA, as it is unclear whether such spatially and temporally comprehensive studies would be considered "sufficient for substantial reproduction."
- **The CBO estimates exorbitant costs.** The attempt to implement this law would also make the EPA process much more costly. For past iterations of this legislation, the CBO has estimated¹ it may take up to \$250 million annually for the EPA simply to comply, and that doesn't even account for the lost benefits from delaying the protections themselves. Compounded with the cuts to EPA's budget that are being proposed, this would just further prevent the agency from being able to do its job.

H.R. 1430 makes a token attempt to address some of the criticisms about privacy concerns for personal medical information and trade secrets. But in practice, the challenge of identifying and redacting all protected and privileged information sets up a series of hurdles and complications that will deter agencies from using the best scientific analysis to inform their work.

Small, cosmetic tweaks do not change the fact that this bill is based on a flawed premise and that the authors of the legislation do not understand the scientific process. Furthermore, the burden imposed on the EPA to redact documents would ultimately place limits on the amount of actual scientific work the EPA can do. The EPA does not exist in a world of infinite resources.

¹ <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1030.pdf>

When this bill was introduced in the 114th Congress as the “Secret Science Reform Act,” it received a veto threat² from the Obama administration, which noted that it would “interfere” with the EPA’s ability to protect public health, safety, and the environment. The worry is that now, with an administration that has shown zero interest in using science to enact safeguards, this legislation could cripple the agency.

I strongly urge you to oppose H.R. 1430, the so-called HONEST Act. The only honest thing about this legislation is that it truly opens the window into the real intentions of the supporters of the bill, and that is to stop the EPA from fulfilling its science-based mission to protect public health and the environment. H.R. 1430 is a wolf in sheep’s clothing, purporting to increase public accessibility to data used in rulemaking, while actually crippling the EPA’s ability to use the best available scientific and technical information to protect public health and the environment.

Agencies protecting our public health should be able to use public health data and attempts to undermine agencies shouldn’t be cloaked in false transparency. This Trojan-horse transparency bill would inhibit the EPA’s ability to carry out its science-based mission to protect human health and the environment. It does not deserve your support.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Rosenberg". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Andrew A. Rosenberg, Ph.D.
Director, Center for Science and Democracy
Union of Concerned Scientists

²https://obamawhitehouse.archives.gov/sites/default/files/omb/legislative/sap/114/saphr1030r_20150303.pdf